IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.427 of 2007

The Commissioner of Income-tax,
Trichy. ..Appellant

Vs

Sri V.A.Oli Mohammed ..Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench "C", Chennai in I.T.A. No.1273/Mds/2006 dated 28.09.2006 for the assessment year 1997-98. ITA.No.16/CIT (A) TRY/2003-2004 on the file of the Commissioner of Income Tax Tiruchirapalli in GI/PA.No.8701/0/1997-1998/ on the file of the Asst Commissioner of Income Tax Circle I, Kumbakonnam.

For Appellant : Mr.T.Ravi Kumar,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench "C", Chennai in I.T.A. No.1273/Mds/2006 dated 28.09.2006 raising the following substantial questions of law:-

1. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in restricting the addition under Sec.69D to Rs.9.00 lakhs after spreading it over the entire period of construction?
2. Whether on the facts and in the circumstances of the case, the Income Tax

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> Tribunal is right in restricting the addition to Rs.9.00 lakhs without any basis in arriving at the same which is not proper?

2. The facts leading to the above substantial questions of law are as under:

The relevant assessment year is 1997-98 and the corresponding accounting year ended on 31.03.1997. The assessee filed Return of income on 27.03.1998 admitting a total income of Rs.99,620/-. The Return was processed under Section 143(1)(a) of the Income-tax Act ("Act" in short) on 11.06.1998 and thereafter the case was taken up for scrutiny and the assessment was completed on 27.03.2000 on a total income of Rs.99,620/-. Subsequently, the assessment was reopened under Section 147 of the Act and the assessment was completed under Section 143(3) read with Section 147 of the Act and determined the total income at Rs.14,96,840/-. While completing the assessment, the Assessing Officer made addition of Rs.13,97,221/- under the head "Unexplained Investment" under Section 69B of the Act. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) partly allowed the appeal and held as follows:-

> "5. The Assessing Officer had made an addition of Rs.13,97,221/- u/s 69B for unexplained investment on account of difference in valuation estimated by the Departmental Valuation officer and cost of construction admitted by the appellant in return of income filed by him. I therefore, after considering the further relief granted above, estimate the unaccounted investment in the building at Rs.9,86,067/- in place of addition of Rs.13,97,221/-. However, I find that the Assessing Officer has made addition u/s 69B for unexplained investment on account of difference in cost of construction only in the year 1997-1998 eventhough the construction was carried out over a period of 5 years, i.e. from the April, 1992 to April, 1997. In view of this the action of the Assessing Officer in considering the excess in cost of construction in one year is not correct. I am of the view that the addition u/s 69B for unexplained investment should be spread over the period of construction in proportion to investment made in the impugned building during the course of construction at the end of each year. The assessing officer is therefore directed to assess the difference in cost of construction as unexplained investment u/s 69B accordingly."

Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal restricted the addition to the extent of Rs.9 lakhs after spreading over the

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entire period of construction and modified the C.I.T.(A)'s order. Hence the assessee's appeal was allowed in part and the C.I.T. (A)'s order was modified to that extent. Hence the present tax case.

3. Learned Standing Counsel appearing for the Revenue submitted that the Departmental Valuer correctly valued the building and since the assessee has not submitted vouchers, invoices etc. towards purchase of construction materials, the Departmental Valuation Officer did not allow rebate towards self supervision. Hence the cost of construction made by the Assessing Officer is in confirmity with law.

4. Heard the counsel. The assessee admitted the cost of construction at Rs.47,42,629/-, whereas the Departmental Valuation Officer estimated the same at Rs.64,88,000/-. Hence there was a difference of valuation of Rs.17,45,371/-. The Assessing Officer finally made an addition of Rs.13,97,221/- under Section 69B of the Act as unexplained investment. The authorities below had considered the valid materials and evidence and estimated the unaccounted investment in the building at Rs.9 lakhs. It is a concurrent finding by both the authorities below. Learned Standing Counsel appearing for the Revenue is unable to produce any material evidence or compelling reason to interfere the orders of the lower authorities. The valuation is not a mathematical precision and there bound to be difference between one valuer to another valuer and it is only a pure question of fact. Recently, the Supreme Court in the case of Commissioner of Income-tax Vs. P.Mohanakala (291 ITR 278), held that whenever there is a concurrent factual finding by the authorities below, the same should be accepted and no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

6. In view of the foregoing reasons, no substantial questions of law arise for consideration of this Court and accordingly the tax case is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench "C",
   Chennai.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals),
   Tiruchirapalli.

4. The Assistant Commissioner of Income-tax,
   Circle I, Kumbakonam.

+ 1 cc to Mr. N. Muralikumaran, Advocate SR No. 32177

MBS(CO)
SR/18.6.2007

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